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| 09/819,992      | 03/29/2001  | Harmeet S. Guraya    | 0236.97             | 3712             |

7590

07/16/2003

Evelyn M. Rabin, Ph.D.  
USDA-ARS-OTT  
5601 Sunnyside Ave., Rm. 4-1189  
Beltsville, MD 20705-5131

EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 07/16/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/819,992

Applicant(s)

GURAYA, HARMEET S.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

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1. This application contains claims 1-14 drawn to an invention nonelected with traverse in Paper No. 4. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
2. Claims 15-30 are rejected under 35 U.S.C. 102(b) as being anticipated by any one of Vadlamani et al, Walon, Kampen, DE4428933, and Meuser et al.

The claims stand rejected for the reasons set forth in the last Office Action (Paper No. 5, mailed 10/24/02.

3. Applicant's arguments filed 4/23/03 have been fully considered but they are not persuasive. Applicant argues that the references applied do not teach various method limitations in producing the instant invention. Furthermore, Applicants argue that the applied references do not teach deagglomeration of the starch-protein agglomerates with minimal starch damage and the homogeneous dispersion of individual starch granules and protein in a liquid matrix.

Applicant is reminded that product claims have been elected and not process claims. As such, rejection of the instant product claims does not require that the references disclose or teach the process limitations, only that said reference disclose the same product produced *as claimed*. It should be noted that the instant product claims (or process claims for that matter) are not limited to a product having "*minimal starch damage and the homogeneous dispersion of individual starch granules and protein in a liquid matrix*". Rather, the instant product claims are much broader, particular with regard to the limitation that the instant product is merely comprised of "deagglomerated starch granules and protein." As broadly claimed, the claims read on

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a product wherein there is *any* deagglomerated starch granules and protein, even a very small amount. It is the Examiner's position that the applied references all teach processes wherein products having some inherent deagglomerated starch granules and protein would exist.

Nevertheless, Applicants arguments have revealed that allowable subject matter may exist. It should be noted that the references of record would not read on product claims which further included the following language (see specification page 5, second paragraph): *a product which is essentially individual, intact starch granules and protein homogenously dispersed in a liquid matrix*. Absent finding references teaching such in an updated search or later submitted prior art, it would appear that product claims employing such language would be allowable.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 703-308-3846. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Anthony Weier  
Primary Examiner  
Art Unit 1761

Anthony Weier  
July 11, 2003



7/11/03